

(2)

CASE NO. 86-649

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

STATE OF FLORIDA,

Cross-Respondent,

vs.

WALTER DIXON,
a/k/a
FRANK EARL RATCLIFF.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

WHETHER A STATE WHICH
HONORS THE REQUISITION
OF ANOTHER STATE FOR A
PRISONER IN ITS CUSTODY FOR
AN OFFENSE, WITHOUT THE
PRISONER'S CONSENT AND
WITHOUT AN AGREEMENT FOR
HIS RETURN, WAIVES ITS
JURISDICTION OVER THE
PERSON OF THE PRISONER SO
THAT HE IS NOT A "FUGITIVE
FROM JUSTICE" AND THUS
CANNOT PROPERLY BE EX-
TRADITED BY THE SURRENDERING
STATE?

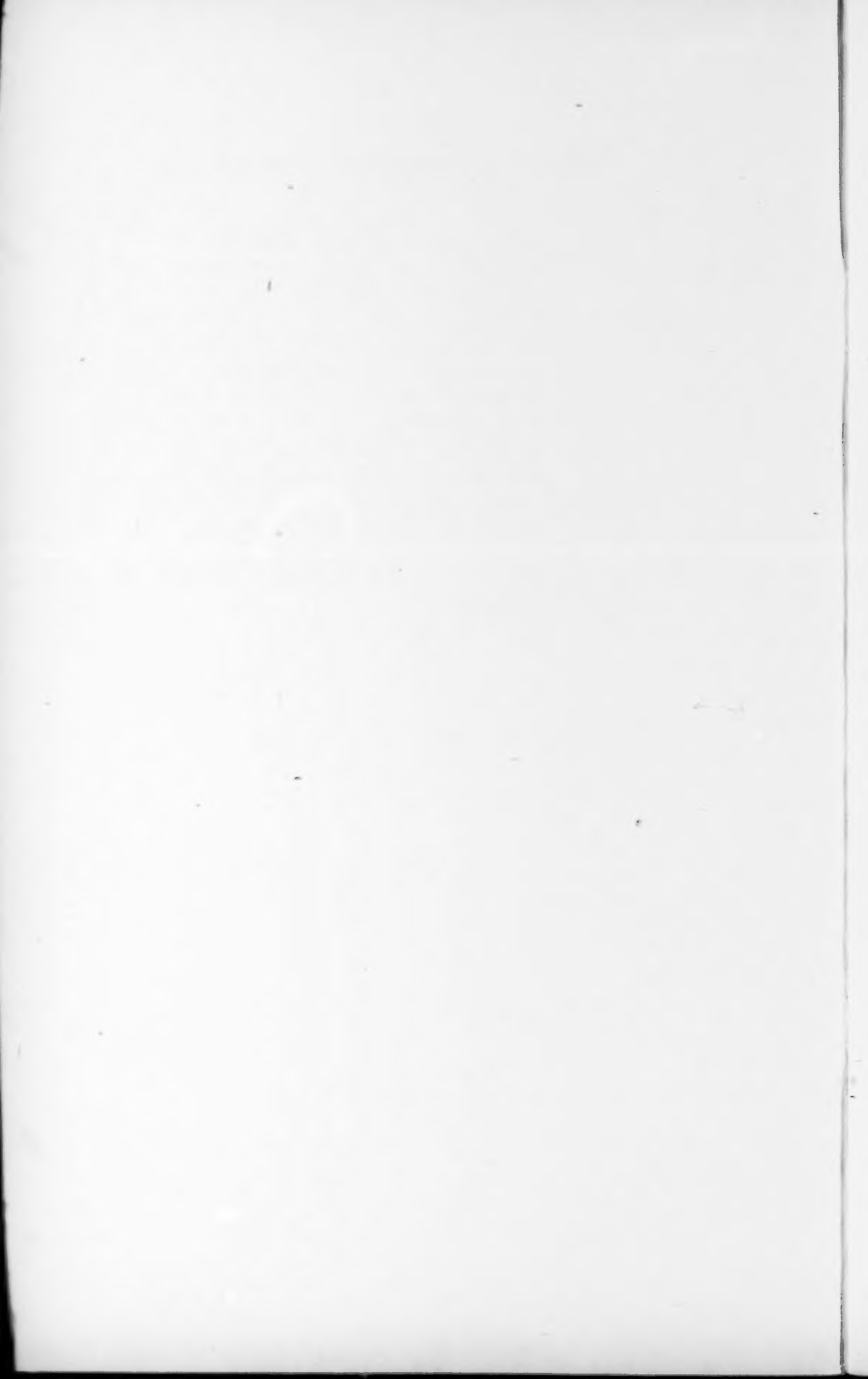


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PREFACE

Cross-Respondent, the State of Florida, is the original petitioner in the Petition for Writ of Certiorari filed on October 17, 1986 in this Court. Walter Dixon aka Frank Earl Ratcliff is the Cross-Petitioner and Respondent.

Cross-Respondent, the State of Florida, is filing the instant brief in opposition in response to Respondent-Cross-Petitioner Dixon's Cross-Petition filed on November 13, 1986.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Mississippi has not enacted the Uniform Criminal Extradition Act, and thus the federal provisions set forth in the Cross-Petition solely govern extradition proceedings in Mississippi. Florida has enacted the Uniform Criminal Extradition Act (§941.01-§941.29 Fla. Stat.). §19 of the UCEA (§941.19 Fla. Stat.) provides that

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authenticity of another state or hold him until he has been tried or convicted and punished in this state.

§25-B of the Uniform Act, found in
§941.27 Fla. Statl, provides that

Nothing in this Chapter contained shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for crime committed within this state, or of its right, power, privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its right, privileges, or jurisdiction in any way whatsoever.

ARGUMENT

The extradition laws of this country are designed to prevent the successful escape of all persons accused of crime and to secure their return to the state wherein they are charged. Consistent with this constitutionally mandated purpose, the majority of jurisdictions in modern times have held that a surrendering state does not automatically waive jurisdiction over the fugitive by honoring another state's demand. This majority has also consistently ruled that a waiver of jurisdiction should be found only in those cases in which the record contains affirmative evidence of intentional waiver by the state. See (in addition to the cases cited by Cross-Petitioner on pages 15

& 16 of the cross-petition) Simmons v. Leach, 626 P.2d 164 (Colo. 1981); State v. Canady, 606 P.2d 815 (Ariz. 1980); Schoengarth v. Bray, 615 P.2d 655 (Colo. 1980); State v. Knapp, 599 P.2d 855 (Ariz. 1979); In Re Roessel, 388 A.2d 835 (Vt. 1978); Gottfried v. Cronin, 55 P.2d 969 (Colo. 1976); Commonwealth v. Haas, 266 A.2d 94 (Pa. 1970); In Re Patterson, 411 P.2d 897 (Calif. 1966); Parsons v. Grimes, 138 S.E.2d 306 (Ga. 1964); Heston v. Green, 189 N.E.2d 86 (Ohio 1963) cert. den. 374 U.S. 822 (1963); State ex rel Graves v. Williams, 298 N.W.2d 392 (Wisc. App. 1980); State ex rel Hood v. Purcell, 494 P.2d 461 (Or. App. 1972); Bishop v. Cupp, 490 P.2d 524 (Or. App. 1971). Also see,

Williams v. Dept. of Corrections,
438 F.2d 78 (9th Cir. 1971); Bullock v.
State of Mississippi, 404 F.2d 75 (5th
Cir. 1968); Derengowski v. U.S. Marshal,
377 F.2d 223 (8th Cir. 1967) cert. den.
389 U.S. 884 (1967).


The duty to deliver a person
charged with an offense emanates from
Article IV §2 of the United States
Constitution, and in keeping with the
spirit of comity, waiver should never
be presumed. In Re Roessel, supra.
The bare fact of Mississippi's sur-
render of cross-petitioner upon
Florida's demand at a time when charges
against cross-petitioner were pending
in Mississippi does not operate to
waive or forfeit Mississippi's power to
later seek satisfaction of the charges

pending in Mississippi.

This Court should decline to accept review on the cross-petition. There is nothing in the federal constitutional and statutory provisions governing extradition which suggests or even hints that an asylum state waives jurisdiction to later prosecute a fugitive when such state honors a demand from another state at a time when charges are pending in the asylum state. Hence, the Uniform Criminal Extradition Act correctly provides that no such waiver is implied, in accordance with the federal law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been forwarded by U.S. Mail to Douglas A. Wallace, Esquire, Post Office Box 9032, Bradenton, Florida, 33506, on this _____ day of December, 1986.

Andrea Smith Hillyer
ANDREA SMITH HILLYER
ASSISTANT ATTORNEY GENERAL